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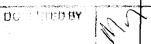
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BEFORE THE ARIZONA

CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF UNS GAS, INC. FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF THE PROPERTIES OF UNS GAS, INC. DEVOTED TO ITS OPERATIONS THROUGHOUT THE STATE OF ARIZONA.

Docket No. G-04204A-08-0571

INTERVENOR IBEW LOCAL 1116'S POST-HEARING BRIEF

Pursuant to the Administrative Law Judge's ("ALJ") instructions during the recent hearing in this matter, Local Union 1116, International Brotherhood of Electrical Workers, AFL-CIO, CLC ("IBEW Local 1116"), by and through undersigned counsel, hereby submits the following comments related to the above-captioned matter:

As set forth in the pre-filed and live testimony of Frank Grijalva, the union's principal officer, IBEW Local 1116 strongly supports and endorses the Commission's adoption of virtually, but not, every aspect of UNS Gas, Inc.'s ("UNS Gas") pending application. See IBEW-1; Tr. 246:8-21. While it is not IBEW Local 1116's intention to

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emphasize its differences with UNS Gas, IBEW Local 1116 nevertheless feels compelled to point out that UNS Gas's belated "REQUEST FOR PROPOSED ORDER REGARDING THIRD PARTY CONTRACTORS" (herein "Request") is both procedurally flawed and substantively baseless.

I. UNS GAS' REQUEST IS CONTRARY TO A.A.C. R14-3-106(F).

As the ALJ is well aware, A.A.C. R14-3-106(F) specifically states that:

A request for a right, authority or other affirmative relief (other than by complaint or counterclaim) or a request for leave to intervene shall be designated an "Application". The application shall set forth the name and post office address of the applicant and shall contain the facts upon which the application is based, with such exhibits as may be required or deemed appropriate by the applicant.

Like its counterpart in the Arizona Rules of Civil Procedure, the obvious purpose of this Rule is to give the opponent or, as in this case, other potentially interested parties, fair notice of the nature and basis of the claim and the relief sought therein. *Cf. Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶6, 189 P.3d 344, 346, ¶6 (2008). Implicitly, the same is true with respect to the Publication of Notice of Hearings contemplated in A.A.C. R14-3-109(B).

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 $^{^{1}}$ See generally UNSG-6, pp. 15-16 (Rebuttal Testimony of David G. Hutchens dated July 8, 2009).

In the instant case, UNS Gas' Request was first injected into this case as an issue long after the Application was filed and the pre-hearing proceedings were underway. See generally Tr. 50:14 to 51:12; 91:15-18. It is undisputed that UNS Gas failed to seek a consolidation of this matter with Docket No. G-04204A-08-0050 (id. at 90:16 to 91:10) and, as such, IBEW Local 1116 respectfully submits that it would constitute a serious procedural error for the Commission to grant, in whole or in part, UNS Gas' Request. Gibbons v. Arizona Corp. Comm'n, 95 Ariz. 343, 347, 390 P.2d 582, 585 (1964) [cited with approval by Clay v. Arizona Interscholastic Ass'n, 161 Ariz. 474, 476, 779 P.2d 349, 351 (1989)].

II. ASSUMING, ARGUENDO, UNS GAS' REQUEST IS NOT PROCEDURALLY FLAWED, THE FACT REMAINS THAT IT IS NOT IN THE PUBLIC INTEREST FOR THE COMMISSION TO GRANT THE REQUEST.

Overlooking for the moment the unlawful nature of UNS Gas' Request, see Clay, 161 Ariz. at 476, the fact remains that even if the issues raised in UNS Gas' Request were properly before the Commission - which they are not - it is quite evident from the record that the public interest would not be well served by the granting of said Request. See Ariz. Const. Art. XV, §3. Indeed, it is undisputed that safety, and the preservation of the health, of the employees and patrons of UNS Gas have been very well served by the existing policy of having the operating and maintenance functions being performed in-house. See Tr. 51:13 to 52:2;

59:7-10; 250:11-17; 252:7-12.

Moreover, since UNS Gas presently has no plan to actually contract out this work (id. at 52:3-6; 59:11-13), nor does it know what cost savings, if any, would result therefrom (id. at 53:9-14; 59:14-17), it is far from clear how the public interest would be served by the Commission granting UNS Gas' Request at this time. As undersigned counsel stated at the hearing (id. at 60:2-4), UNS Gas' Request is a solution in search of a problem and, as such, it ought to be rejected by this Commission.

WHEREFORE, it is respectfully requested that the Commission grant UNS Gas' pending application in all material respects with the exception of the portion related to the Request.

RESPECTFULLY SUBMITTED this 18th day of September 2009.

LUBUN ENOCH, P.C.

Nicholas J. Enoch, Esq.

Attorney for Intervenor IBEW Local 1116

Original and thirteen (13) copies of IBEW Local 1116's Brief filed this 18th day of September, 2009, with:

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